United Nations

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 897

Case No. 939: JHUTHI

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Mayer Gabay, Vice-President, presiding; Mr. Chittharanjan Felix Amerasinghe; Mr. Kevin Haugh;

Whereas, at the request of Gurnam Singh Jhuthi, a former staff member of the United Nations Centre for Human Settlements (hereinafter referred to as HABITAT), the President of the Tribunal, with the agreement of the Respondent, successively extended to 31 July and 31 October 1994, 31 January, 30 April, 31 July and 31 October 1995, 30 June and 30 September 1996, the time-limit for the filing of an application with the Tribunal;

Whereas, on 26 August 1996, the Applicant filed an application requesting the Tribunal, inter alia:

"[To find:]

(a) That the harsh and unreasonable administrative decision to separate the Applicant was unjustified and led to irreparable damage to the personal and professional image and reputation of the Applicant;

(b) That the rationale justifying the Respondent's decision to separate the Applicant was motivated by extraneous factors;

(c) That the Applicant was denied proper redress through a procedure established by the Secretary-General and that the irregularities of the JDC proceeding occasioned a lack of due process;

...

[and to order:]

(a) That the decision to separate the Applicant for misconduct, conveyed to the Applicant on 25 October 1993 by letter of 7 October 1993 from ... [the] Under-Secretary-General for Administration and Management (...), be rescinded and [that] the Applicant be reinstated as of 25 October 1993;

(b) Alternatively, ... that the Applicant be awarded the payment of two years net base salary in lieu of notice;

(c) and ... [that] an amount the Tribunal deems appropriate [be paid] as an additional monetary sum in compensation for the moral suffering and professional prejudice inflicted on the Applicant."

Whereas the Respondent filed his answer on 19 September 1997;

Whereas the Applicant filed written observations on 10 November 1997;

Whereas, on 6 August 1998, the Tribunal put questions to the Respondent, to which he provided answers on the same date;

Whereas, on 10 August 1998, the Tribunal informed the parties of its decision to adjourn consideration of the case until its next session, to be held in New York beginning in October 1998;

Whereas, on 29 October 1998, the Applicant submitted comments on the Respondent's 6 August 1998 submission;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on a six-month fixed-term contract as a Security Officer, at the G-4 level, in the UN Common Services Safety Unit, in Nairobi, Kenya. He served thereafter on a series of fixed-term contracts of varying

duration. On 1 April 1990, his functional title was changed to Senior Security Officer. On 1 October 1990, he was promoted to the G-5 level. On 25 October 1993, the Applicant was separated from service.

On the night of 29-30 September 1991, a Panasonic Notebook Computer was stolen from the UNICEF/WFP Office in the United Nations complex in Gigiri, Kenya. The Applicant was among the staff members on duty at the time of the theft. On 6 January 1992, a staff member of UNICEF reported that a garage proprietor, who turned out to be the Applicant's brother, offered to sell the staff member the same Panasonic Notebook computer that had been stolen from the UNICEF/WFP Office a few months earlier. This identification was made when the staff member, before deciding whether to purchase the computer, had it checked by a UNICEF technician. The technician identified the computer as the one that had been stolen from the UNICEF/WFP Office. The Applicant's brother, when questioned by the local Criminal Investigation Department (CID), stated that the Applicant had given him the computer. At that time, the Applicant was in India on annual leave, but he returned to Kenya on 12 January 1992. On 20 January 1992, the Applicant was interrogated by an Investigator of the CID.

On 21 January 1992, the Applicant reported for duty. He was interviewed by the Chief, Security and Safety Unit (SSU), in the presence of the Deputy Chief, SSU, and the Assistant Chief, SSU. In his signed statement, the Applicant asserted that, although he had been in the area of the UNICEF/WFP Office at the time of the alleged theft, he had no knowledge of the missing computer; that in mid-December 1991, he purchased a computer for Kenyan shillings (KShs) 20,000 from a man named Chris whom he met through a Tanzanian trader; that his wife gave him the money to purchase the computer because he "convinced her that it would help her to learn something"; that on 2 January 1992, he gave his brother the computer he had purchased and asked his brother to sell it because he needed money to travel to India. His brother told him that he knew a UN employee who

wanted to purchase a computer. He instructed his brother to sell the computer for KShs 35,000 to 40,000 and to pay the travel agent for his travel to India.

On 23 January 1992, the Applicant was informed that he was being suspended with pay with immediate effect, until further notice, pending the outcome of an investigation into his involvement in the theft. The Applicant was required to respond to the charges by 27 January 1992.

On 27 January 1992, the Applicant wrote to the Chief, Personnel Recruitment and Administration Section (PRAS), objecting to the short time in which he had been required to reply to the charges and denying that he stole the computer. The Applicant also stated as follows:

> "During the interview with the police I learned that a Computer which I had purchased thinking it was contraband turned out to be stolen from the United Nations.
>
> ...
>
> I acknowledge that the purchase of contraband items is a practice in poor judgement, and I hasten to point out that I am not the only one guilty of poor judgement in this case, as another United Nations staff member also sought to require [sic] the computer by other means. ..."

On 13 February 1992, the Applicant was criminally charged by the Kenya Police with stealing a Panasonic Notebook computer from the United Nations Gigiri offices in Nairobi, and, in the alternative, with handling stolen property, to which charges he pleaded "Not Guilty".

On 17 March 1992, the Applicant wrote to the Chief, PRAS, in order to amend a sentence from his 27 January 1992 memorandum, quoted above, so that it would read: "During the interview with the Police I learned that a Computer which I had purchased NOT thinking it was contraband turned out to be stolen from the United Nations." (Emphasis in original.)

On 11 May 1992, the Chief of External Relations for HABITAT's Nairobi office informed the Director, CID, that with respect to the criminal charges, the Applicant did not enjoy diplomatic privileges and immunities as provided for by the Headquarters Agreement between the UN and Kenya relating to HABITAT. On 14 October 1992, however, the charges were dismissed by the Resident Magistrate's Court on the grounds that the prosecution had not met its burden of showing that the Applicant did not enjoy privileges and immunities as a UN employee. In its ruling, the Court referred to a "letter dated 27th April 1992 from New York to the Gigiri office, [pointing out that] the proper forum for this matter to be dealt with is the joint disciplinary committee." On 11 January 1993, in response to queries by the Chief, PRAS, the Applicant's advocate in the criminal matter stated that the communication cited by the magistrate was a memorandum from the member of the Panel of Counsel representing the Applicant, addressed to the Assistant-Secretary-General, Office for Human Resources Management (OHRM), arguing that the matter should be handled internally.

By memorandum dated 5 March 1993, the Chief, PRAS, informed the Applicant that his case would be heard by an ad hoc Joint Disciplinary Committee (JDC) and that he had a right to be represented by any serving or retired staff member at Nairobi. The Applicant was also given the names of the members of the Committee, a copy of the Respondent's submissions to the JDC, and information regarding his right to submit written observations and to suggest possible witnesses.

On 25 August and 1 September 1993, the JDC conducted hearings at which the Respondent and the Applicant presented their evidence. The Applicant produced, among other things, a statement by his brother and a statement by the Tanzanian trader who allegedly introduced the Applicant to "Chris", along with a translation of the latter statement.

The JDC adopted its report on 10 September 1993. Its consideration, conclusions and recommendations read, in part, as follows:

"Consideration ...

...

37. The [Applicant] ... failed to satisfy the Panel of the existence of Chris and that raised serious doubts about his averment that he was a bona fide purchaser of the computer that had been stolen from Gigiri when he was on duty, and which was acknowledged to have been handled by his brother at his garage under his instructions and for his benefit. In his submission in writing, the [Applicant] had raised the issue of why, despite the fact that there were others on duty when the computer was stolen, he was the only one being pursued. It is, however, clear that it is only in his case as admitted by him that investigations had shown that a computer had been found linking the [Applicant] and his brother and he had been unable to unequivocally explain how he procured that stolen computer.

...

40. The material before the Panel, and the evidence adduced established (a) that a computer belonging to the UN was stolen; (b) that it went missing when the [Applicant] was on duty; (c) that [the] computer established to be the one that the UN had lost was found in his brother's garage; (d) that he admitted that he bought said computer from one, Chris - whom [the Applicant] claimed had died and could not therefore be produced to collaborate [sic] [the Applicant]'s evidence, nor could independent evidence in this regard be produced to affirm Chris existed or had died; (e) despite being a CID officer previously he did not know Chris' other names, or eventually obtain a receipt from him to establish credibility about his averments; (f) that proceeds of [the] sale would have been his. Further, having learnt the item was stolen, he appears to have made no effort to recover his Kshs 20,000/- and have the seller pursued by the Police in the period prior to the alleged death of Chris around March 1993. He thus failed to assist the UN to reach the culprits and persisted in stating that he had legitimately obtained it but without producing incontrovertible evidence in this regard as would be expected from an ex-officer of CID.

...

42. During interrogation the Panel wanted to know why the [Applicant] in his correspondence with [the] Administration of 27 January 1992, paragraph 4, page 2, which says 'During the interview with the Police, I learned that a computer which I had purchased thinking it was contraband turned out to be stolen from the United Nations'. **The paragraph should be read** 'During the interview with the Police, I

learned that a computer which I had purchased **Not thinking** it was contraband turned out to be stolen from the United Nations'. [sic] The Panel wanted to know why it took the [Applicant] two months from 27 January till 17 March 1992 to make that amendment; the [Applicant] stated that he was under stress.

43. In addition, given his training and experience, the [Applicant] failed to exercise due care in not obtaining the receipt for Kshs 20,000/- that he claimed to have paid; and showed reckless disregard of high standards expected of an official of the UN in the Code of Conduct of International Civil Servants, in being ready, because 'other staff' become involved, to deal with contraband merchandise as per his own statement, **not corrected at the time of the correction above, noted in paragraph 42**, in which he states 'I acknowledge that the purchase of contraband items is a practice in poor judgement, and I hasten to point out that I am not the only one guilty of poor judgement in this case as other United Nations staff members also sought to require [sic] the computer by other means.'

44. Further the Panel felt uncomfortable about the veracity of the evidence given by a brother and Abdi - described as a 'close friend' of the [Applicant] [-] in the absence of any other independent evidence to corroborate unsubstantiated and at times contradictory statements made orally and in writing and given his demeanor before the Panel throughout the proceedings.

Conclusions and Recommendations

45. ... the ad hoc Joint Disciplinary Committee considers that there is overwhelming circumstantial evidence that establishes the case against [the Applicant] and unanimously recommends as per staff rule 110.3(vii) the separation from service without notice or compensation in lieu thereof, notwithstanding rule 109.3, of [the Applicant]."

On 7 October 1993, the Under-Secretary-General for Administration and Management transmitted to the Applicant a copy of the ad hoc JDC report and informed him as follows:

"The Secretary-General has examined your case in the light of the Committee's report. He has taken note of the Committee's findings of overwhelming circumstantial evidence substantiating the charge made against you that you stole a computer belonging to the United Nations and of your failure to produce any credible evidence to the contrary. He has also noted the Committee's

statement that you showed reckless disregard of high standards expected of an official of the United Nations in your attitude toward the purchase of contraband merchandise. The Secretary-General has also given consideration to the Committee's unanimous recommendation that you be separated from service without notice or compensation in lieu thereof.

The Secretary-General has concluded that your conduct constituted a serious violation of the United Nations standards of conduct and integrity expected of each staff member of the Organization and that this misconduct is incompatible with continued service with the Organization.

Pursuant to his discretionary authority to impose an appropriate disciplinary measure, the Secretary-General has decided to separate you from service for misconduct under staff regulation 10.2, paragraph 1 and staff rule 110.3(a)(vii) with effect from the date you receive this letter. The Secretary-General has also decided that you not be paid compensation in lieu of notice."

On 26 August 1996, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant has suffered irreparable professional and personal damage, due to the long duration of his suspension, the JDC's delays, and the incorrect decision holding him accountable for a crime he did not commit.

2. The Assistant Secretary-General, OHRM, was only informed of the decision to suspend the Applicant after such action had already been taken, in violation of paragraph 5 of ST/AI/371. Although the Applicant was suspended "under the provisions of staff rule 110.4," that rule does not provide for suspension.

3. The Applicant was not informed of his right to obtain the assistance of another staff member, as paragraph 6 of ST/AI/371 provides. The Applicant was given an insufficient amount of time to reply to the charges against him, and his reply was never forwarded to the Assistant Secretary-General, OHRM, as required by ST/AI/371.

4. The JDC did not afford the Applicant due process, as it practically placed the burden of proof on the Applicant and conducted an "interrogation" of the Applicant.

5. The Applicant was exonerated from the allegations against him in the local court proceedings.

6. No facts were established before the JDC to demonstrate conclusively that the Applicant was guilty of any misconduct.

7. The Applicant was denied access to his counsel, a staff member in New York, who was not informed until two months after the JDC made its recommendation to the Secretary-General that the JDC had been convened. Staff rule 110.7(d) and paragraph 15(b) of ST/AI/371, providing for a staff member's right to be represented by another staff member at the same duty station, unfairly limits a staff member's ability to obtain competent counsel.

Whereas the Respondent's principal contentions are:

1. The Respondent has broad discretion regarding disciplinary matters, including the discretion to determine what constitutes misconduct warranting dismissal. The Respondent's decision to dismiss the Applicant was a valid exercise of that authority and was not vitiated by mistake of fact, by lack of due process or by prejudice or any other extraneous factors.

2. The material facts presented to the JDC demonstrate that the Applicant failed to meet the standard of conduct required of international civil servants. The JDC properly found sufficient circumstantial evidence that demonstrated that the Applicant engaged in seriously improper conduct with respect to his possession of the stolen computer. The Applicant was never exonerated of the criminal charges in the local court proceeding; rather the Applicant misled the court into believing that he was protected by diplomatic immunity when he was not so protected.

3. The Applicant was suspended in accordance with all relevant staff rules. All of the procedures set out in Chapter X of the Staff Rules were followed. Any delays between the Applicant's suspension and his dismissal were caused by the intervening criminal proceedings, and were otherwise reasonable or caused by the Applicant's own actions. The Applicant's right to be represented by local counsel was fully respected, and in fact, the hearing was adjourned so that the Applicant could obtain local counsel and have that counsel present at the hearing. Although the Applicant now claims to have wanted his *New York* counsel present as well, there is no indication that he sought to obtain her presence during the proceedings in Nairobi.

4. There is no mistake of fact or evidence of prejudice or extraneous factors. Since the Applicant never denied having possession of the stolen computer, he had the burden of proving that his possession was rightful. The JDC's findings were based on the Applicant's own assertions and on the JDC's evaluation of his witnesses. The burden of proving prejudice or other improper motivation rests with the Applicant, who failed to discharge it.

The Tribunal, having deliberated from 2 July to 7 August 1998 in Geneva and from 30 October to 20 November 1998 in New York, now pronounces the following judgement:

I. The case arises from the dismissal for misconduct of the Applicant because he was found to have stolen a Panasonic Notebook computer which was missing from the UNICEF/WFP Office in the UN complex in Gigiri, Kenya. At the time he was separated from service, the Applicant was a Senior Security Officer in the UN Common Services Safety Unit in HABITAT, Nairobi, Kenya. He was separated on the recommendation of the Joint Disciplinary Committee (JDC).

II. As the Tribunal held in Judgement No. 890, Augustine (1998), the taking of disciplinary measures involves the exercise of a discretion by the Administration but it is also the exercise of a quasi-judicial power. In disciplinary cases, the Tribunal examines (i) whether the facts on which the disciplinary measures were based have been established, (ii) whether they legally amount to serious misconduct or misconduct, (iii) whether there has been any substantive irregularity, (iv) whether there has been any procedural irregularity, (v) whether there was an improper motive or abuse of discretion, (vi) whether the sanction is legal, and (vii) whether the sanction imposed was disproportionate to the offence.

III. The issues raised in this case are:

(i) Whether the finding of facts justified the finding of misconduct;

(ii) Whether the suspension was procedurally incorrect;

(iii) Whether there was undue delay on the part of the Respondent in taking a final decision in the Applicant's case; and

(iv) Whether there were any other procedural irregularities or violations of due process.

IV. With regard to the finding of misconduct, there are two matters that need to be considered: first, whether the findings of fact and misconduct were justified on the evidence and, second, whether, as the Applicant alleges, the JDC considered, and was influenced by, irrelevant facts when it concluded that the Applicant was guilty of misconduct.

The critical facts are that the Applicant was on duty in the area when a computer was stolen from the UNICEF/WFP Office. Later, that same computer was found to have been in his possession. In general, the burden of proof, where discretionary powers are exercised by the Administration, requires both parties to provide the Tribunal with all the relevant evidence that they have to enable the Tribunal to establish the facts. In disciplinary cases, when the Administration produces evidence that raises a reasonable inference that the

Applicant is guilty of the alleged misconduct, generally termed a prima facie case of misconduct, that conclusion will stand. The exception is if the Tribunal chooses not to accept the evidence, or the Applicant provides a credible explanation or other evidence, that makes such a conclusion improbable. This is what was meant when the Tribunal stated in Judgement No. 484, Omosola (1990), paragraph II, that "once a prima facie case of misconduct is established, the staff member must provide satisfactory proof justifying the conduct in question." The evidence adduced by the Administration raised a strong prima facie case that the Applicant had stolen the computer. In the face of this prima facie case, the Applicant provided the explanation that, while he indeed came into possession of the computer, which he later gave his brother to sell for Kshs 35,000 or 40,000, in order to raise money for a trip to India, he had purchased it for Kshs 20,000 from a man named Chris whom he met through a Tanzanian trader. He further claimed that Chris was unavailable to tesify because he had since died. The Applicant failed to produce any acceptable evidence insofar as the JDC was concerned that Chris had ever existed, let alone that he had died. He also failed to produce a satisfactory affidavit from the Tanzanian trader, as had been requested by the JDC, producing instead an undated, unofficially translated statement that the JDC considered to be wholly unsatisfactory.

Further, the Applicant initially stated that he purchased the computer "thinking it was contraband" and "acknowledge[d] that the purchase of contraband items is a practice in poor judgement". He later sought to correct that statement to read that he purchased the computer "NOT thinking it was contraband" (emphasis in original). The Applicant's attempted correction of the statement is not compatible with the rest of that statement and thus, far from rebutting the prima facie case against him, raises serious doubts as to his veracity.

The Applicant further adduced before the JDC, as evidence of his innocence, that he was fully "acquitted" in the criminal prosecution brought against him by the Kenyan authorities in the Kenyan courts which had been based on the same facts. The case before

the Kenyan courts was withdrawn, inter alia, on a jurisdictional point, on the ground that the Applicant, as a UN employee, might have enjoyed immunity from jurisdiction, under the UN Convention on Privileges and Immunities, which had not been properly waived, and therefore he was not subject to suit. He was certainly not acquitted on the merits.

The Tribunal is satisfied that there was ample evidence before the JDC that entitled the JDC to reach the conclusion that the Applicant stole the computer and to reject his explanations. Consequently, the finding of fact and of misconduct cannot be faulted.

The Applicant also alleges that the JDC report is riddled with mistakes of fact and irrelevancies. This claim is unproven.

V. The Applicant alleges that his suspension was improper because there were irregularities in its imposition. The Applicant claims that there was a violation of the applicable provisions in ST/AI/371, paragraph 5, insofar as the Assistant Secretary-General, Office of Human Resources Management (OHRM) was informed of the suspension after and not prior to the suspension. He further claims that the wrong staff rule was invoked in his suspension, as the Chief, Personnel Recruitment and Administration Section (PRAS), incorrectly referred to staff rule 110.4, instead of the applicable staff rule 110.2.

On 22 January 1992, the Executive Director, HABITAT, advised the HABITAT office in Nairobi of his decision to suspend the Applicant with pay pending investigation of the charges against the Applicant. On 23 January 1992, the Executive Director informed the Assistant Secretary-General, OHRM, of the suspension, providing him with a summary of the case as well as the Applicant's statement concerning the Applicant's possession of the stolen computer. On that same day, the Chief, PRAS, notified the Applicant that he was being suspended with pay, stating the reasons for the suspension and noting that an enquiry had been commenced by the local Criminal Investigation Department.

On 24 February 1992, the Assistant Secretary-General, OHRM, wrote to the Executive Director, HABITAT, as follows:

> "...
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> 2. I took note that you suspended [the Applicant] with pay, effective 23 January 1992, under staff rule 110.4. May I draw your attention to the fact that, under the revised Chapter X of the Staff Rules ..., suspensions are now authorized under staff rule 110.2. Under staff rule 110.2(b), it is now necessary for the staff member to receive a written statement of the reason for the suspension and its probable duration.
>
> 3. In view of [the Applicant's] denial of the allegation that he had been involved in the theft of the computer, no action can be taken at this point without further investigation. I would appreciate being kept informed of the results of the police investigation now in progress, and receiving any additional information, documents or statements from witnesses which would allow for a proper evaluation of this case."

Although the Applicant had raised the issue of whether the authority to suspend the Applicant was properly delegated to the Executive Director, HABITAT, the Respondent did not specifically address that issue in his answer. In response to questions put by the Tribunal, the Respondent acknowledged that the HABITAT Administration had applied an obsolete procedure for suspension that had been superseded six months earlier by the revised Chapter X of the Staff Rules. In his memorandum, the Assistant Secretary-General, OHRM, while taking note of the suspension, had advised the Executive Director, HABITAT, that it was "now necessary" under staff rule 110.2 to provide the Applicant with a written statement of the reason for the suspension and its possible duration. The Tribunal can find no evidence that the Executive Director, HABITAT, acted upon the instruction of the Assistant Secretary-General, OHRM, to rectify the prior omission, as the record is devoid of any subsequent letter to the Applicant detailing the reasons for the suspension and its probable duration.

Furthermore, under ST/AI/371, heads of office no longer have the authority to suspend staff members, but only to "make a recommendation" to the Assistant Secretary-General, OHRM, who "on the basis of evidence" provided by the head of office, "shall decide whether the matter should be pursued, and if so, whether suspension is warranted." Thus, as the Respondent conceded in response to questions put by the Tribunal, the decision to suspend the Applicant was not made under the rules in effect. Rather, it was made by an official who was "no longer delegated the authority to suspend staff members" and who did not obtain the prior approval of the Assistant Secretary-General, OHRM. The Assistant Secretary-General, OHRM, himself wrote that "no action can be taken at this point without further investigation" and requested that he be provided with further evidence "which would allow for a proper evaluation of this case."

The Respondent failed to apply the proper rules in force at the time of the Applicant's suspension, and the Executive Director who imposed the suspension did not have a proper delegation of authority to do so. Therefore, the Tribunal finds that there was an error in the application of the law which, while not being sufficiently substantial to nullify the decision to impose disciplinary measures, nevertheless violated the Applicant's rights. For this irregularity, he should be compensated with two months' net base salary. The Tribunal notes, however, that in all other aspects of the proceedings, the Applicant was afforded all the substantive and procedural protections to which he was entitled.

VI. The Applicant complains that the JDC and the Administration took unduly long to decide his case. This point has been addressed above in connection with the suspension. The need to make a thorough investigation of the allegations against the Applicant warranted the length of time taken by the JDC to make its recommendations and by the Respondent to take a decision on the matter. In addition, the Tribunal reiterates that the Applicant was partly responsible for the delay in the investigation and conclusion of his case.

VII. The Applicant further complains that he was denied due process because he was not informed of his right to retain another staff member as counsel; that he did not have sufficient time to reply to the charges against him; and that the JDC's interrogation of him constituted a denial of due process. The Tribunal finds that the Applicant was, in fact, accorded due process protections throughout the proceedings and that the JDC was particularly careful in this regard.

VIII. Finally, the Applicant claims that he was denied access to his counsel in New York, who was a member of the Panel of Counsel and who allegedly was not informed of the JDC proceedings until two months after that body had made its recommendation to the Secretary-General. The claim that this amounted to a denial of the right to representation is not correct. Staff rule 110.7(d) provides that a "Joint Disciplinary Committee shall permit a staff member to arrange to have his or her case presented before it by any other staff member or retired staff member at the same duty station where the Committee is established." The Applicant's right to have local counsel, as provided in staff rule 110.7(d), was fully respected, and in fact, a staff member represented him at the proceedings before the ad hoc JDC. Although the Applicant now claims that he was entitled to have his New York counsel represent him, he presents no evidence that he sought to obtain her presence during the proceedings in Nairobi. The Tribunal concludes that the Applicant's right to the assistance of counsel, pursuant to the Staff Regulations and Staff Rules, was fully honoured. The Tribunal concludes that there were no material procedural irregularities of which the Applicant can complain with respect to his right to counsel.

IX. For the foregoing reasons, the Tribunal:

1. Orders the Respondent to pay the Applicant the equivalent of two months' net base salary at the rate in effect at the time of separation, as compensation for a

procedural irregularity; and

2. Rejects all other pleas.

(Signatures)

Mayer GABAY
Vice-President, presiding

Chittharanjan Felix AMERASINGHE
Member

Kevin HAUGH
Member

New York, 20 November 1998

R. Maria VICIEN MILBURN
Executive Secretary